

Advisory Opinion 2025-1

Response to a Request for an Advisory Opinion from Senate Legal Counsel Richard J. Lehmann on Behalf of Senator Donovan Fenton (March 24, 2025)

Senate Legal Counsel Richard J. Lehmann has requested an advisory opinion on behalf of Senator Donovan Fenton, addressing whether he is required to recuse himself from participating in HB 649-FN, a bill removing the requirement for physical safety inspections and on-board diagnostic tests for passenger vehicles and eliminating funding for the motor vehicle air pollution abatement fund

Attorney Lehmann provided the Committee with the following facts. Sen. Fenton's family owns car dealerships in the Keene area that conduct annual physical safety inspections and on-board diagnostic tests that are required under current law. Sen. Fenton owns an equity stake of these businesses, and he is an active participant in them. Sen. Fenton does not believe that revenue derived from inspections at his families' dealerships represent a greater or lesser percentage of revenue than other similar businesses.

The relevant statutes can be found in RSA Chapter 14-C. RSA 14-C:4-a provides as follows:

I. A legislator shall recuse themselves from participation in any official legislative activity pertaining to legislation when:

(a) The legislator has a conflict of interest with the subject of the legislation as defined in RSA 14-B:1, I; and

(b) The legislator or a member of the legislator's household could reasonably be expected to incur a direct and substantial financial benefit or detriment as a result of the outcome of the legislative activity.

A conflict of interest, as defined in RSA 14-B:1, I, means the condition in which a legislator has a special interest in any matter which could directly or indirectly affect or influence the performance of the legislator's official activities. A special interest is defined as any financial or non-financial personal interest in the outcome of a matter that is the subject of official activity, distinct from and greater than the interests of the public at large.

Having considered the facts as presented, it is the opinion of the Committee that Senator Fenton has a conflict of interest which requires his recusal from participating in legislative activities involving HB 649-FN. Although his interest in the subject may be no greater than other businesses which perform inspections and diagnostic tests, he does have a personal interest which is greater than the public at large. Given his participation in the family

business, he could reasonably be expected to incur a direct and substantial financial benefit or detriment as a result of the outcome of HB 649-FN.

Because the Committee has found that recusal is required pursuant to RSA 14-C:4-a, I, it has not found it necessary to consider whether recusal would be required under the provisions of RSA 14-C:4-a, II.

We appreciate the opportunity to be of assistance.

For the Committee,
Edward M. Gordon
Chairman

[Vote: 6-1]